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Health Law, International Health Law, Comparative Health Law, Health Policy, Health Cases, Medical and Biomedical Law

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VOLUME 3 - Nº 01 – 2025

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Editorial – Volume 3 – nº 01- 2025

We are pleased to present the latest issue of the **Global Health Law Journal-GHLJ**, which not only contains six exceptional articles, but also showcases the academic research of our master's in health law students at Santa Cecilia University.

Professors, master's students, postgraduate students and health professionals also contribute in an extraordinary way to the Global Health Law Journal-GHLJ, and it is a privilege to share their own academic work with you all.

The **Global Health Law Journal-GHLJ** is a biannual production, an open access, peer reviewed, and the outcome of a collaborative, widespread, and international effort.

The **GHLJ** strives to offer an opportunity for interdisciplinary discussion on topics in health law, international health law, comparative health law, health policy, health cases, medical, and biomedical law.

The Journal targets a broad and diverse audience of academicians, professionals, and students in Law, Medicine, Biomedicine, as well as policy makers, law operators, and legislators in health care.

Articles must be related to health law, international health law, comparative health law, health policy, health cases, medical and biomedical law, Medicine, and Biomedicine.

Articles can be submitted in English, Spanish, French, Italian or Portuguese.

Submissions to the Global Health Law Journal are peer-reviewed by our distinguished Editorial Board and reviewers, consisting of internationally recognized experts.

In short, the Global Health Law Journal is looking to become a dynamic and engaging forum for comparative and interdisciplinary research and commentary.

It has been created and raised in an innovative, cooperative and participatory spirit, and will always continue its commitment to these values.

We hope you will enjoy the Global Health Law Journal, and that you can contribute to future issues.

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INSUFFICIENT ENVIRONMENTAL PROTECTION MEASURES VIOLATE HUMAN RIGHTS: ELDERLY SWISS WOMEN WIN LAWSUIT AGAINST THE COUNTRY OVER CLIMATE CRISIS [1]

Ricardo Dourado dos Santos [2]

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Insufficient Environmental Protection Measures Violate Human Rights: Elderly Swiss Women Win Lawsuit Against the Country Over Climate Crisis

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Abstract

Contextualization: It is known that climate change resulting from human activities directly and indirectly affects not only the environment, but also human health itself. On the other hand, it is also not new that the most basic human rights, such as the right to health and quality life, are recognized and sought for a broad scope, relying on local and international legislation. Problem: A group of elderly Swiss women organized and sought the European Court of Human Rights to hold the Swiss nation accountable, alleging that the Swiss State failed to mitigate the effects of climate change, which specifically negatively affected the lives of elderly women. After eight years, the European Court of Human Rights issued an unprecedented decision, granting the elderly women's claim. The big issue is to interconnect the right to a balanced environment with a human right. Objective: To understand whether the right to a balanced environment is a kind of human right, or if they are just intersecting. In this context, it is necessary to conjecture whether the decision taken by the European Court of Human Rights in this specific case will have legal consequences in terms of expanding the possibility of protection for both. Methods: In this article, we used methods of bibliographic review and compilation in the light of the concrete case in terms of its originality. Result: The decision recognized that Switzerland had failed to comply with its duty to mitigate the consequences of greenhouse gases, including the impact on the health of older women, and consequently failed to provide effective protection for privacy. Conclusions: Recognizing the

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intersection between the right to a balanced environment and human rights, and serving as a precedent, it opens space for more in-depth studies in terms of applicability before other international courts.
Keywords: Heating. Climate. Supreme Court decisions. Right to Health.

Introduction[4]

Human evolution over the centuries has brought modernity to the development of our essential activities, facilitating them through new technologies, especially after the industrial revolution, a period of great technological development from the second half of the eighteenth century, causing enormous transformations corroborated by the new industrial revolution in the mid-nineteenth century.

At the same time, these industrial evolutions were accompanied by behaviors that affected the environment,

[4] This work was originally presented at the VI International Congress of Health Law and XII Ibero-American Congress of Health Law, held on October 16, 17, 18 and 19, 2024 at the Santa Cecilia University (UNISANTA). Due to the recommendation for publication by the Scientific Committee of the Congress, the present version was made. Honorable mention for best work presented at the Congress, for the Working Group "International Regimes and Health Law". *Cfr.* SANTOS, Ricardo Dourado dos; ALMEIDA, Verônica Scriptore Freire e. Medidas insuficientes de proteção ambiental violam Direitos Humanos idosas suíças vencem processo contra o país sobre crise climática. UNISANTA Law and Social Science, Vol. 13, N. 2 (Jul./Dec. 2024), pp. 48-64. ISSN: 2317-1308.

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unbalancing it and causing pollution of various types, which began to affect the quality of fauna, flora and human life and health itself.

Concomitantly, in the post-World War period, given the atrocities found there, movements began to provide for and ensure basic human rights, then called Human Rights, including the right to health and life.

The intersection of the three themes, climate, health and fundamental rights, still needs to be well defined to provide full and broad protection to human beings in their current and future generations.

Thus, the purpose of the present study was to ascertain what consequences may arise from the decision taken by the European Court of Human Rights and whether they really establish the recognition of this intersection and serve as a precedent, filling a gap in the protective spectrum.

To this end, qualitative bibliographic research was carried out as a source, followed by the compilation of the materials found that had correlation with the pertinent subjects, through a textual reading and synthesis in the syntopical modality, culminating in a bibliographic review of narrative literature, with an approach of legal positivism.

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The research was based on a compilation of news, interviews, journalistic articles, about the case judged by the European Court of Human Rights, considering that the recency of the decision culminates in a scarcity of specific scientific works, which were also sought to support sections of development.

Open search platforms such as google search and google scholar were used, using keywords such as "elderly swiss", "European Court of Human Rights", "environment and human right", selecting through the titles those that were closest to the theme proposed in this work, and then each one was read, with abstraction of the ideas to be reorganized and interpreted in the light of the new sentence.

1. Aggressions to the environment, climate change and necessary measures

Anthropy is the study of the actions of human beings on the environment, and such human behaviors, whether direct or indirect, can harm the environment, affecting fauna, flora, ecosystems, and human subsistence itself (Souza, 2018).

Such aggressions to the environment are long-standing and are not new, as we have long acted with the arrogance of superior beings, motivated by the greed to exploit

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environmental resources in a criminal and irresponsible way, putting us at risk of not having a habitable future on earth (Greenpeace, 2022).

Human actions in this sense alter and impact the conditions of functioning of the environment, causing irreversible damage and can be, basically, in two ways, either destroying natural resources during their exploitation, or introducing pollutants into the environment (Greenpeace, 2022)

Both in one and the other strands of action, they culminate in climate change that affects the quality of life and human health. (Guitarrara, 2024).

Weather is the momentary state of the meteorological conditions of a place, while climate is a long-lasting trend of the meteorological conditions of a given region (Regoto, P., Burgard, C. and Jones, C., 2022).

While the weather can change from one moment to the next, the climate of a region should be and present the same characteristics for years, with mild changes. Thus, weather influences climate and climate is characterized by the types of weather in the set of information from a given region (Regoto, P., Burgard, C. and Jones, C., 2022).

The very terminology, climate change, indicates that it is climate change, which has been occurring all over the planet

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and has effects that can already be seen and felt in several places, such as the extinction of animal and plant specimens, melting of glaciers, rising sea levels, among others (UN, 2022).

Climate change is characterized by the alteration in the planet's temperature patterns, caused and accelerated, mainly by human action (UN, 2022).

These changes cause an increase in temperature and impact the terrestrial ecosystem and every day it becomes more evident that they affect people's health (Guitarrara, 2024).

According to the Intergovernmental Panel on Climate Change (IPCC), a global reference when it comes to scientific data on the climate crisis, the last two decades have been the warmest in the last thousand years (IPAM, 2024).

The increase in temperature on the globe has been detected gradually, whose origin is pointed out by the increase in gases in the atmosphere that warm the planet, called greenhouse gases (GHG) (IPAM, 2024).

In this process, the gases interfere with the reflection of the sun's rays, which when they enter the atmosphere should be reflected for the most part. This phenomenon results in excessive heat retention in the planet's atmosphere, creating an effect similar to that of a greenhouse (IPAM, 2024).

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The warming of the atmosphere and oceans alter rainfall patterns, cause glaciers to melt, and modify the behavior of species and ecosystems (Guitarrara, 2024).

Excessive heat causes heat stroke, dehydration, and in extreme cases, death. (UB, 2023).

These factors directly and indirectly affect the most vulnerable people, such as children, and the elderly. This is due to the greater difficulty of these groups in regulating body temperature (Guitarrara, 2024).

As in a domino effect, we can list that pollutant emissions increase the temperature of the earth and air, contaminating it, which generate systemic changes in the environment causing direct and indirect effects on human health, such as respiratory, heart, brain diseases, cancer, skin diseases, dehydration, heat stress, burns, among others.

Danish researchers from the University of Copenhagen (Minor et al., 2022) conducted scientific research and concluded that global warming already interferes with the quality of sleep in humans at levels below that recommended for an adult. (Fioratti, 2022).

Still on the interference of global warming on sleep quality:

> The advance of climate change is expected to intensify the problem. Simulations by the researchers indicate that if nothing is done to

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> reduce fossil fuel emissions by 2099, people could lose an average of 58 hours of sleep each year. According to the study, older adults lose twice the amount of sleep per degree of warming compared to young or middle-aged adults (Fioratti, 2022, n.p).

With knowledge about the causes and effects of climate change, especially about the increase in temperature, called global warming, the need to take measures to contain it was then glimpsed

The start for environmental and ecological awareness as an agenda for countries on five continents took place in 1992, when the city of Rio de Janeiro hosted the United Nations Conference on Environment and Development, known as Eco-92 or Rio-92.

From this meeting, other periodic meetings called the Conference of the Parties - COP and the assumption of commitments to environmental responsibility came over the years, culminating in the first international treaty for the control of Greenhouse Gases - GHG, known as the Kyoto Protocol, which was later replaced by the Paris Agreement.

It is true that the globe is suffering from warming and that the increase in temperature above two degrees centigrade will culminate in tragic consequences for people and reflexively for

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countries in their economy and the environment (Carvalho, 2021).

Also according to Carvalho (2021), considering that international law has as its main sources treaties and conventions, which are binding on the nations that sign them, giving legitimacy to the use of dispute resolution mechanisms arising from them, thus receiving the label of "hard law", while guidelines from multilateral institutions, resolutions and declarations of non-governmental organizations, in addition to declarations and codes of conduct from the political organs of the United Nations system are labeled as "soft law", and may assume relevance.

One hundred and ninety-five countries approved the Paris Agreement during COP-21, with the central objective of strengthening the global response to the threat of climate change (Neto; Guimarães, 2024).

It should be noted that Switzerland is one of the countries that has adhered to the Agreement (Neto; Guimarães, 2024).

In the legal perception and according to Wedy (2024), it is not a good idea for countries to promote setbacks with regard to fraternal rights such as the human and fundamental rights of their citizens, so the protection of such rights cannot be insufficient.

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2. Human rights and the European Court of Human Rights

In a very simple way, human rights are a set of prerogatives that extend to all people, regardless of any distinction, covering civil, political, social, cultural and economic aspects.

According to the United Nations – UN, it can be said that: "Human rights are rights inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion or any other condition"

After two world wars and the verification of atrocities committed in each of them, the United Nations General Assembly in Paris proclaimed the Declaration of Human Rights, composed of thirty articles that stipulate basic precepts for the survival of each human being, in a minimally dignified way.

Categorizations of the rights of the person are contemplated, such as freedom, life in its breadth of quality with health and well-being.

At the same time, countries of the European continent came together to create the Council of Europe, self-called by them as the European conscience, and on November 4, 1950, the European Convention on Human Rights (ECHR) was adopted in Rome, which entered into force in the international legal order, on September 3, 1953 (Brasil, 2024).

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Backed by the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly, the European Convention on Human Rights is relatively short, with fifty-nine articles, some modified by introduction brought by protocols and other articles added in additional protocols.

At this point, the wording of the second and eighth articles stands out:

> Article 2.
> Right to life.
> 1. Everyone's right to life is protected by law. No one may be intentionally deprived of life, except in execution of a capital sentence pronounced by a court, if the crime is punishable by this penalty by law.
> 2. There shall be no violation of this Article where the death results from the use of force, which has become absolutely necessary:
> (a) to ensure the defence of any person against unlawful violence;
> (b) to make a lawful arrest or to prevent the escape of a lawfully detained person;
> (c) to suppress, in accordance with the law, an uprising or insurrection
>
> Article 8.
> Right to respect for private and family life.
> 1. Everyone has the right to respect for his or her private and family life, home and correspondence.
> 2. There may be no interference by a public authority with the exercise of this right except where such interference is provided for by law and constitutes a measure which, in a democratic society, is necessary for national security, public safety, the economic well-being of the country, the maintenance of disorder or disorder and the prevention of criminal offences, the protection of

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> health or morals, or the protection of the rights and freedoms of others.

In addition to the enshrinement of rights and freedoms, the European Convention brought a novelty for the protection of these fundamental rights in Europe, creating a control mechanism regarding respect and compliance with what had been established and in view of the positions of the States Parties, ensuring the effectiveness of the protection system.

Such a mechanism is the jurisdictional body of the Convention, called the European Court of Human Rights – ECHR.

As a court, the European Court of Human Rights (ECHR) has the mission of ensuring compliance with the commitments assumed by the States Parties, resulting from the provisions of the ECHR and its protocols, covering issues related to the interpretation and application of the provisions in specific cases.

Provided for in Title II, in articles nineteen to fifty of the European Convention on Human Rights, we give light to article nineteen that creates it and gives it a permanent character of operation:

> ARTICLE 19
> Establishment of the Court
> In order to ensure compliance with the commitments of the High Contracting Parties under this Convention and the Protocols thereto, a European Court of Human Rights, hereinafter

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> referred to as "the Court", is hereby established and shall operate on a permanent basis

The Court, which shall be based in Strasbourg, shall be composed of judges chosen by the Parliamentary Assembly of each member country and with a number of judges equal to the number of the High Contracting Parties.

For the choice of judges, candidates must have a high moral reputation and fulfill cognitive conditions on judicial functions with recognized competence.

The exercise of jurisdiction is on an individual basis, and no other activity incompatible with independence, impartiality or full-time availability may be carried out. It is seen that the judges do not represent the interests of their original nation.

Once elected, the judge will exercise his term of office for a period of nine years, without the right to reelection and respecting the age limit of seventy years, also enjoying the impossibility of his removal, except if the Court itself, through the other judges, when they decide with a quorum of two-thirds for the removal, recognizing that it no longer meets the requirements required for the position (Brasil, 2024).

The analysis and decision of the cases that are submitted to the Court obey a gradation of complexity, partitioning its

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functioning with a single judge, committees, sections and full court.

A single judge, acting monocratically, may not examine any petition made against the nation on whose behalf the judge has been elected.

All other formations are collegiate, with the committee composed of three judges, the chambers composed of seven judges, and may exceptionally function with five, while in a full court, the composition is seventeen judges.

Within the powers of the Court, any State Party is permitted to submit a claim for consideration in the face of an alleged violation of the provisions of the Convention and its protocols by another State Party.

It also provides for the possibility of receiving petitions from any natural person, non-governmental organization, or group of individuals who consider themselves to be the victim of any violation imputed to any State Party in relation to the rights recognized in the Convention or its protocols, bearing in mind that by acceding to the Convention, the State Party undertakes to comply with its premises, as well as not to create obstacles to the effective exercise of the right to be claimed individually (Brasil, 2024).

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It is also important to mention that the Court is not restricted to hearing only complaints filed by nationals of States Parties, extending the right to petition, so to speak, to any person dependent on the jurisdiction of the State in question (Brasil, 2024).

In addition to examining complaints about possible violations of rights, the Court may also give opinions on legal issues and on the interpretation of the Convention and its protocols.

As seen, although the list of rights enshrined in the Convention is relatively short, the Court itself has currently acted dynamically, analyzing the literal text and abstracting from it other rights, which, although not expressly provided for, result from interpretation from a modern perspective and together with the Court's own jurisprudence on each right (Brasil, 2024).

The possibility of the right to a balanced environment with a view to human health and well-being was agreed and discussed, being considered a new human right, which Bertoldi (2007) considers possible and necessary, naming it as a right of solidarity.

I return to the theme of the presentation of individual complaints, also called singular, since this is the focus of the

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present work. Article thirty-four of the Convention allows any person to exercise the right to petition the Court, in order for his claim to be assessed, however, it is necessary to meet some requirements, called admissibility requirements.

Before the merits, the Court verifies whether the aforementioned admissibility requirements have been met, among which and one of the most important, in my view, is the fact that all domestic remedies without effectiveness in the State Party have been exhausted.

In fact, each State Party undertakes to respect the rights provided for in the Convention and its Protocols, as well as assuming the responsibility to make effective remedies available internally in its legal system. Thus, such a provision lends the Court a character of subsidiarity, manifesting itself only when the accused State Party has not provided the necessary resources or that they have been insufficient and ineffective.

3. The case of Verein Klimaseniorinem Scheiz v. Switzerland

Some elderly women in Switzerland, feeling the effects of climate change in their own health, especially global warming in the face of greenhouse gases, and aware of scientific evidence

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linking that, although such changes affect humanity as a whole, some groups of people are more susceptible and sensitive to such effects, In other words, they are in more vulnerable health due to climate change, just like the elderly.

Scorching summers in Switzerland have given rise to scientific research that has proven that older women are the most vulnerable to heat-related illnesses. The interviewees reported heart disease, respiratory diseases, and fatigue caused by excessive heat.

They then decided to carry out some action that could contribute to the quality of human life and promote a confrontation with the inert State.

As they themselves have propagated in interviews, "Some of us were raised like this. We were not created to sit in a rocking chair and knit" (Rannard, 2024, Online)

Thus, these women understood that Switzerland had not been fulfilling its commitment to the world, not only in terms of reducing the emission of greenhouse gases, but also of compensating for the environment due to the emission of such gases.

Although it was possible to exercise the right to petition, both internally with the Swiss government and internationally with the European Court of Human Rights, since they had legal

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capacity, they chose to strengthen the action with the creation of an association of elderly women for the climate. Article 34 of the ECHR reads:

> ARTICLE 34
> Individual petitions
> The Court may receive applications from any natural person, non-governmental organization or group of individuals who consider themselves to be the victim of a violation by any High Contracting Party of the rights recognized in the Convention or its protocols. The High Contracting Parties undertake not to hinder the effective exercise of this right. (emphasis added)

This time, any legal proceedings would not depend individually on the will of this or that person, or even on remaining alive, allowing for a broader representation and counting on the support of other organizations, especially with the financing of procedural costs, as Greenpeace effectively acted.

The association also followed a specification aimed at elderly women, whose justification lies in the fact that this group is particularly susceptible to more intense and frequent heat waves. They did not forget that global warming also affects other groups of human beings, such as children and elderly men, however, they chose to focus on the group of proven susceptibility, older women, increasing the possibility of success with official and judicial bodies.

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This time, on August 23, 2016, there was the inaugural meeting of the association called Elderly Women for Swiss Climate Protection – Verein KlimaSeniorinnen Schweiz, with forty members at the time, whose number of members increased dramatically, exceeding two thousand members at the time of the final judgment (Greenpeace, 2020)

Seeking the most correct paths, the association initially filed a document with its claim with the internal administrative and judicial bodies of Switzerland, as required by the rules of the European Convention on Human Rights in order to be able to appeal to the European Court of Human Rights.

In the same year, in November 2016, legal applications were submitted to the Federal Council, the Federal Office for the Environment, Transport, Energy and Communication (DETEC), the Federal Office for the Environment (FOEN) and the Federal Office for Energy (SFOE).

Only after five months, in April 2017, the Federal Department of the Environment – DETEC made a decision, rejecting the association's request, which, not being satisfied, in the following month (May/2017), filed an appeal with the Federal Administrative Court against DETEC's decision, however, again the State's inertia presents its face and manifests itself only in December 2018, dismissing the appeal.

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The association does not give up and in January 2019 presents an appeal to the Federal Supreme Court, against the decision of the Federal Administrative Court, and again, after a year and four months, the Federal Supreme Court dismisses the appeal.

In the face of all the neglect of the Swiss bodies and justice, the association announced the filing of a complaint with the European Court of Human Rights in October 2020, sending the application in December of that same year, which was confirmed receipt soon after. In March 2021, the European Court of Human Rights admits the climate case.

In this context, it can be inferred that the objective of the elderly women through the association and activation of the competent bodies was to demand that the authorities correct the course of Swiss climate policy, since they understood that the current measures and targets to limit global warming to a safe level were insufficient.

In other words, Rosmarie Wydler-Walti, co-chair of Senior Women for Climate Protection Switzerland, said:

> Our demand to the Swiss government is simple: protect our health in the face of the climate crisis. The absurd logic of the national courts is that we cannot seek protection until it is too late, so we have taken Switzerland to the European Court of Human Rights. The current pandemic has proven that prevention is the best opportunity for people during

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> a crisis, so why wait to tackle the climate crisis until there is no way back? We are doing everything we can to get Switzerland to take bold climate action now.

Emblematic was the symbolic delivery of the association's complaint to the European Court of Human Rights, when a delegation of elderly women sailed down the Rhine from Basel to Strasbourg aboard the Greenpeace ship MV Beluga-II. Outside the Tribune, a large flag was displayed made of hundreds of flags designed by people who supported the elderly women's call for climate protection in Switzerland.

The arguments brought to the attention of the ECHR were based on the theses that Switzerland failed in measures to mitigate the effect of climate change, negatively affecting the lives of elderly women, in addition to which it did not comply with the duty of effective protection of life, violating Article 2. of the ECHR and did not guarantee the respect for private life enshrined in Article 8. of the Convention. They also pointed out that Switzerland has not introduced legislation or implemented adequate measures to combat climate change, failing to establish a carbon budget in its environmental legislation.

Finally, the association demonstrated that they did not have effective access to the internal bodies and courts.

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3.1 Decision and repercussions

States Parties to the European Convention on Human Rights are obliged to respect the decisions rendered by the Court in disputes to which they are parties.

The execution of the decision taken by the Court is supervised by the Committee of Ministers, which is a political body of the Council of Europe, to which the judgment is transmitted.

If it is found that a High Contracting Party refuses to respect a judgment rendered, it shall be incumbent upon the Committee of Ministers to notify the Party and, by a two-thirds majority decision of its full members, to refer the matter to the Court.

On April 9, 2024, the European Court of Human Rights declared, in the case of Verein KlimaSeniorinnen Schweiz et al. v. Switzerland, that the High Party violated the human rights of its citizens by not doing enough to curb climate change.

In the decision, the Court recognized that Switzerland has not met its goal of reducing carbon emissions, therefore, it has a legal obligation to adopt concrete measures in this area, solving its own climate mismanagement. Furthermore, human and environmental rights do not allow for setbacks, especially on the part of States.

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It is not uncommon for there to be other litigations involving climate change and individual or collective claims for compensation, compensation or obligations to be imposed on States, but in none of them has there been the innovation that is now brought to light through the decision issued by the European Court of Human Rights, to the point that links and recognizes the correlation between the duty of environmental care and human rights, serving the legal framework of the latter to defend the former, resembling the climate crisis as also being a human rights crisis. (Wedy, 2024)

The Court's decision was collegiate by the plenary, composed of seventeen judges, who proceeded to the analysis and issued the mandatory and condemnatory decision-making decree only with regard to the case of KlimaSeniorinnen v. Switzerland, since two other complaints were analyzed in the same composition of the grand chamber, although they were not formally binding, and they were staggered together.

The other two cases refer to claims named Carême v. France, and Duarte Agostinho v. Portugal, where in the first, the Court concluded that the plaintiff was no longer a resident of the city where he had been mayor of Grande-Synthe, affected by climate change, and therefore did not meet the requirement of being a victim as required by Article 34 of the ECHR. In the

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Agostinho case, it was a complaint by six young Portuguese people alleging serious current and future effects due to climate change, pointing to Portugal and other countries as responsible, a prejudiced demand for analysis of the merits in view of the fact that it was considered that there had been no exhaustion of domestic remedies, in addition, the inclusion of other countries, the territorial jurisdiction of the ECtHR would be extended.

As a preliminary point, the Grand Chamber recognised the importance of climate change as a pressing issue and with harmful effects on human health, in particular on specific groups of vulnerability, such as older women, a fact that the Court could not ignore.

It went even further, declaring the need for special care on the part of the authorities, care elevated to intergenerational burdens, when finally, it recognizes the responsibility and competence of the Court itself in the face of the State's omission in effective actions, although it made it clear that the Court limited itself to the issues within its competence according to Article 19. of the ECHR, stating that judicial intervention could not replace the action to be taken by the legislative and executive branches of government.

On the merits, it states that the violations of Article 8 occurred in the present case, due to gaps in Switzerland's

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internal regulatory framework, with failure to quantify the national limitations on greenhouse gas emissions – GHG, for not having acted in a timely and adequate manner.

Below, the wording of Article 8 of the ECHR, literally:

> ARTICLE 8
> Right to respect for private and family life
> 1. Everyone has the right to respect his or her private and family life, home and correspondence.
> 2. There may be no interference by a public authority with the exercise of this right except where such interference is provided for by law and constitutes a measure which, in a democratic society, is necessary for national security, public safety, the economic well-being of the country, the maintenance of disorder or disorder and the prevention of criminal offences, the protection of health or morals, or the protection of the rights and freedoms of others.

Still on the merits, but with respect to article 2. of the ECHR, the decision highlighted that the harm that climate change – global warming causes to human health, especially to the most vulnerable groups, has been scientifically proven in the records, and the relationship between climate and life has been proven.

Notwithstanding such recognition, the Court pointed out that there must be a real and imminent risk to life, perhaps even individualized, since Article 2. to serve in an abstract way to protect a possibility of harm, requiring a serious, genuine and

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verifiable threat to life, if we do not see what Article 2 says. of the ECHR:

> ARTICLE 2
> Right to life
> 1. Everyone's right to life is protected by law. No one may be intentionally deprived of life, except in execution of a capital sentence pronounced by a court, if the crime is punishable by this penalty by law.
> 2. There shall be no violation of this Article where the death results from the use of force, which has become necessary:
> (a) to ensure the defence of any person against unlawful violence;
> (b) to make a lawful arrest or to prevent the escape of a lawfully detained person;

Specifically comparing the two articles mentioned, the Court rejected the claim under Article 2. With regard to the law, however, in the light of the jurisprudence of Article 8, which already established environmental protection, it states that in its light an extension of the rights provided for by the ECHR is possible.

Article 8. It provides a balanced analysis between the present and necessary issues of climate change with repercussions on the political decisions of the States.

The Grand Chamber unanimously ruled that Switzerland had violated Article 6. of the ECHR for not having guaranteed effective access to the organs and internal justice, while by sixteen votes to one, it established the recognition of having left

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that High Party to be desired in terms of the goals of reducing greenhouse gases.

As mentioned, the decision, in addition to being unprecedented, brings mandatory effects when, although without specifying which ones, it orders Switzerland to adopt effective and concrete measures, and the other aspect is the condemnatory nature, as it determines the payment of eighty thousand euros to the association as procedural costs and expenses.

It is worth noting that despite the mandatory nature, the court did not impose a specific condemnation or measure on Switzerland, because the plaintiffs did not formulate a claim for damages.

It urges to note that in 2023, UN Member States declared access to a clean, healthy and sustainable environment as a universal human right. Clean air-related obligations are embodied in a few international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

The novelty of the decision lies in the fact that it recognizes that a climate crisis is a human rights crisis, linking one issue to another.

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Governments around the world have committed to drastically reducing greenhouse gas emissions for the next decades, and all ECHR contracting countries have made a commitment to defend human rights, so the intersection of issues in an international Court's decision brings regional and international impacts and consequences.

Even if we consider isolated actions by one nation, in this case Switzerland, a grain of sand in the ocean in relation to global warming, which would require actions by all nations, we emphasize that the decision can influence the law of the forty-six European countries that make up the Council of Europe, establishing a legal precedent, influencing future decisions in climate cases that may be pending in other countries or international courts.

Since Switzerland is not known to comply with its deferes, because it is a state governed by the rule of law, it will feel the moral and political obligation to review its position, since it was contradicted in its argument that there was no relationship between the climate crisis and human rights, in addition to being declared to violate the sixth and eighth articles of the ECHR.

The decision was widely publicized in the international media, in addition to also having repercussions in the scientific, academic and political scene, and as mentioned, it is in

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Switzerland's interest to be an ethical-moral example for Europe.

In the same vein, the repercussion may reflect on the actions adopted by other nations outside Europe as well, as it reinforces the responsibility of States to act against climate change with consequent protection of human rights, under penalty of being held responsible.

In this way, there is an incentive for climate issues to be increasingly judicially demanded in correlation with human rights, both in domestic courts and in international courts.

At the Brazilian national level, we could agree on a Direct Action of Unconstitutionality by Omission, or going further, even, along the lines discussed by the ECHR, in arguing that Brazilian climate policy is not sufficiently implemented to defend the fundamental rights provided for in the Federal Constitution, such as the right to life, health, the dignity of the human person, and the ecologically balanced environment itself (Neto; Guimarães, 2024).

Neto and Guimarães (2024) mention that, at the same time, there is also the possibility of calling on the Inter-American Court of Human Rights, to examine the performance of any Member State in terms of achieving its actions or inactions on climate issues on human rights.

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Conclusions

This study sought to verify the correlation between climate change, its harmful effects on human health, and the protection of human rights, based on an unprecedented decision handed down by the European Court of Human Rights – ECHR at the end of a lawsuit filed by elderly women in association against Switzerland.

As a first motto, the measurement and eventual proof of climate change was sought and that it, especially global warming due to the excessive emission of greenhouse gases, would cause some harm to human health, reaching the verification of several changes in the quality of human life caused by global warming, whose effects were more significant when incidents in a group of specific people of greater vulnerability, just like women of advanced age.

Because the study carried out has as its starting point the decision rendered by the ECHR, we limited ourselves to studying the structure of international human rights regulations and their jurisdiction at the European level, bringing the provisions of the European Convention on Human Rights – ECHR, with Switzerland being one of the High Contracting Parties.

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The ECHR's decision was to recognize that Switzerland had not really fulfilled its mission to minimize the effects of greenhouse gases at effective levels, leaving a gap in its domestic policy on this issue, which affected the quality of human health, in particular that of elderly women, culminating in the condemnation of the nation to take sufficient and effective measures.

Beyond a simple condemnation, the ECHR decision recognized the intersection between climate crisis and human rights because of human life and health, whose precedent could strengthen and empower the plaintiffs who are invoking or intend to argue the violation of human rights to hold governments accountable in other courts for actions along this path.

In summary, as Switzerland is a signatory to climate conventions and treaties as well as to human rights and the ECHR has jurisdiction for cases of human rights violations, recognizing that climate change affects human life and consequently violates human rights, broadening the concept of rights provided for in the ECHR, that nation has the obligation to care for the climate so that it is reflexively protecting human rights.

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Therefore, the decision under analysis is an important precedent to instruct other analogous actions at various levels, and now needs a more in-depth study for its applicability before other international courts, such as the Inter-American Court of Human Rights.

Finally, it is worth noting that the lawsuit filed by Verein KlimaSeniorinnen Schweiz against Switzerland did not have the selfish power to claim any individual benefit, such as compensation, but rather, there is a clear humanitarian intention for transgenerational benefit, forcing Switzerland to do more for the climate, as this would protect the lives of future generations.

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